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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Craig A. Ami,
10 Plaintiff,

No.2:22-CV-01202-SMB

11 v.

ORDER

12 Commissioner of Social Security
Administration,

13 Defendant.

14
15 At issue is the denial of Plaintiff Craig A. Ami’s Application for Social Security
16 Disability Insurance (“SSDI”) benefits by the Social Security Administration (“SSA”) under the Social Security Act (the “Act”). Plaintiff filed a Complaint, (Doc. 1), and an
17 Opening Brief, (Doc. 10), seeking judicial review of that denial. Defendant SSA filed an
18 Answering Brief, (Doc. 11), to which Plaintiff replied, (Doc. 12). The Court has reviewed
19 the parties’ briefs, the Administrative Record, (Doc. 8), and the Administrative Law
20 Judge’s (“ALJ’s”) decision, (Doc. 8-3 at 29–42), and will affirm the ALJ’s decision for the
21 reasons addressed herein.

22 **I. BACKGROUND**

23 Plaintiff filed an Application for SSDI benefits in June of 2019, alleging a disability
24 beginning in January of 2017. (Doc. 8-8 at 12–37.) Plaintiff’s claim was initially denied
25 in July of 2019. (Doc. 8-3 at 32.) A hearing was held before ALJ Sally Reason on January
26 11, 2021. (*Id.* at 42.) After considering the medical evidence and opinions, the ALJ
27 determined that Plaintiff suffered from severe impairments including obesity and lumbar
28 degenerative disk disease. (*Id.* at 35.) However, the ALJ concluded that, despite these

1 impairments, Plaintiff had the residual functional capacity (“RFC”) to perform light work
2 as defined in 20 CFR 404.1567(b). (*Id.* at 38.) Consequently, Plaintiff’s Application was
3 again denied by the ALJ on January 22, 2021. (*Id.* at 42.) Thereafter, the Appeals Council
4 denied Plaintiff’s Request for Review of the ALJ’s decision—making it the final decision
5 of the SSA Commissioner (the “Commissioner”)—and this appeal followed. (Doc. 1.)

6 **II. LEGAL STANDARDS**

7 An ALJ’s factual findings “shall be conclusive if supported by substantial
8 evidence.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). The Court may set aside
9 the Commissioner’s disability determination only if it is not supported by substantial
10 evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).
11 Substantial evidence is relevant evidence that a reasonable person might accept as adequate
12 to support a conclusion considering the record as a whole. *Id.* Generally, “[w]here the
13 evidence is susceptible to more than one rational interpretation, one of which supports the
14 ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947,
15 954 (9th Cir. 2002). In determining whether to reverse an ALJ’s decision, the district court
16 reviews only those issues raised by the party challenging the decision. *See Lewis v. Apfel*,
17 236 F.3d 503, 517 n.13 (9th Cir. 2001).

18 **III. DISCUSSION**

19 Plaintiff argues that the ALJ committed materially harmful error in evaluating
20 Plaintiff’s symptom testimony and failing to provide a significant number of jobs that
21 match Plaintiff’s RFC. (Doc. 10.) The Commissioner argues that the ALJ’s opinion is
22 supported by substantial evidence and contains no legal error. (Doc. 11.) The Court has
23 reviewed the medical and administrative records and agrees with the Commissioner for the
24 following reasons.

25 **A. Plaintiff’s Symptom Testimony**

26 An ALJ performs a two-step analysis to evaluate a claimant’s testimony regarding
27 pain and symptoms. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). First, the
28 ALJ evaluates whether the claimant has presented objective medical evidence of an

1 impairment that “could reasonably be expected to produce the pain or symptoms alleged.”
2 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007) (quoting *Bunnell v.*
3 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)) (internal quotation marks omitted). Second,
4 absent evidence of malingering, an ALJ may only discount a claimant’s allegations for
5 reasons that are “specific, clear and convincing” and supported by substantial evidence.
6 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012).

7 “[T]he ALJ must specifically identify the testimony she or he finds not to be credible
8 and must explain what evidence undermines the testimony.” *Holohan v. Massanari*, 246
9 F.3d 1195, 1208 (9th Cir. 2001). General findings are insufficient. *Id.* “Although the
10 ALJ’s analysis need not be extensive, the ALJ must provide some reasoning in order for
11 [the Court] to meaningfully determine whether the ALJ’s conclusions were supported by
12 substantial evidence.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th
13 Cir. 2014). “[T]he ALJ may consider inconsistencies either in the claimant’s testimony or
14 between the testimony and the claimant’s conduct.” *Molina*, 674 F.3d at 1112. For
15 instance, the ALJ may consider “whether the claimant engages in daily activities
16 inconsistent with the alleged symptoms.” *Id.* (quoting *Lingenfelter*, 504 F.3d at 1040).

17 Plaintiff argues the ALJ committed materially harmful error by rejecting Plaintiff’s
18 testimony when limitations stemming from his symptoms would otherwise preclude his
19 ability to work. (Doc. 10 at 9–14.) Plaintiff further argues that the ALJ did not clearly
20 explain how his testimony is inconsistent with other parts of the record. (*Id.*) The
21 Commissioner argues the ALJ’s discounting of Ami’s testimony is supported by
22 substantial evidence. (Doc. 11.) The Commissioner further argues the ALJ gave valid
23 reasons for discounting Plaintiff symptom testimony including that his treatment is
24 conservative, he had a gap in his work history prior to the alleged disability, he is able to
25 perform daily tasks, and his impairments can be successfully mitigated by prescribed
26 treatment. (*Id.*)

27 Here, Plaintiff testified that he needed constant breaks at his last job due to pain, can
28 “barely stand an hour,” but is able to live alone and cited no problems being able to perform

1 daily living activities. (Doc.10 at 7, Doc. 8-3 at 39.) The ALJ, although noting that
2 Plaintiff likely has symptoms that align with his diagnosed impairment, found that Plaintiff
3 has “generally been treated with conservative methods including various . . . injections,
4 physical therapy and medications” and that none of these medications lead to symptoms
5 that otherwise inhibit his ability to work. (Doc. 8-3 at 39.) The ALJ also discounted
6 Plaintiff’s symptom testimony because medical records show a gap in treatment, which
7 undermines the severity he alleges. (Doc. 8-3 at 40.) The Court agrees with the
8 Commissioner that the ALJ gave specific reasons for finding Plaintiff’s testimony is not
9 credible—including the gap in treatment, the absence of a clinical disability finding, and
10 Plaintiff’s self-professed ability to perform daily tasks. (Doc. 8-3 at 39–40.); *see*
11 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (“The ALJ may consider many
12 factors in weighing a claimant’s credibility,” including “unexplained or inadequately
13 explained failure to seek treatment or to follow a prescribed course of treatment.”).
14 Although Plaintiff may disagree with how the ALJ interpreted the record and his subjective
15 symptom characterization, the ALJ did offer sufficient reasoning to discount his testimony.

16 Therefore, the Court finds the ALJ did not commit materially harmful error by
17 rejecting Plaintiff symptom testimony.

18 **B. RFC and Job Determination**

19 Generally, to qualify for disability, a Plaintiff must be unable to perform a
20 significant number of jobs in the national economy, not merely be unable to perform the
21 same job they had worked before injury. *See* 20 C.F.R. § 404.1560(c). When making this
22 determination, the ALJ must consider a plaintiff’s RFC, age, education, and work
23 experience. 20 C.F.R. pt. 404, subpt. P., app. II. The ALJ’s RFC determination should
24 align with potential occupations under the CFR guidelines. If there is a substantial number
25 of occupations a plaintiff could perform despite symptoms, then he will be found not to be
26 disabled.

27 Plaintiff argues that the ALJ’s determination of which jobs Plaintiff could still
28 perform are incongruent with the ALJ determined RFC. Specifically, Plaintiff argues that

1 the specified “jobs” require Plaintiff to go beyond his RFC limitation of “simple, repetitive
2 tasks, occasional interaction with supervisors, coworkers and the general public and
3 working in a ‘low stress’ environment with low production demands.” (Doc. 12 at 8; Doc.
4 8-3 at 41.) The Commissioner argues that “occupation” is a broad term and the DOT
5 definitions are just examples of what may be required. (Doc. 11 at 13.) Because of this,
6 an expert’s job suitability recommendation may not always align precisely with an exact
7 definition of a job, therefore Plaintiff’s RFC may still align with the occupations listed by
8 the ALJ.

9 Here, the ALJ relied, in part, on a vocational expert’s (“VE”) analysis to determine
10 the possible occupations Plaintiff was still able to perform. (Doc 8-3 at 41.) The VE
11 testified that given all the relevant factors, including the RFC, Plaintiff was still able to
12 perform light unskilled work that would translate to jobs like photocopy machine operator,
13 mail clerk, and marker. (*Id.*) An ALJ is not required to press a VE on their
14 recommendation where the conflict between the RFC and his recommendation is not
15 “apparent or obvious.” *Gutierrez v. Colvin*, 844 F.3d 804, 807–08 (9th Cir. 2016). Further,
16 ALJ’s do not need to ask follow-up questions where the “frequency or necessity of a task
17 is unlikely or unforeseeable.” *Id.* This means that even if a certain job could occasionally
18 have tasks that do not align with a plaintiff’s RFC, it does not mean the ALJ fails by relying
19 on the VE to include it as a potential occupation Plaintiff is still able to perform.

20 Additionally, as the Commissioner points out, at least one of these jobs, marker, has
21 already been found in this Circuit as not being fast paced, despite being described by
22 Plaintiff’s as needing the ability to “make fast . . . movements of the fingers” in the DOT
23 definition. (Doc. 10 at 15.), *See e.g., Shannon C. S. v. Saul*, No. ED CV 19-874-PJW,
24 2020, at *1 (C.D. Cal. Apr. 13, 2020). This evidences that there can be some discrepancy
25 between a given rote definition and the practical job application as assessed by a VE and
26 applied by an ALJ. Therefore, Plaintiff may reasonably still be considered able to do the
27 jobs listed here.

28 In sum, the Court agrees with the Commissioner that the DOT does not “purport to

1 list every detail . . . and every setting in which each job can be performed.” While some
2 of the potential settings or individual positions within broad occupation categories could
3 arguably fall outside of a plaintiff’s RFC, that does not mean that every, or even a majority
4 of, positions within these categories does. (Doc. 11 at 12.) *See Gutierrez*, 844 F.3d at 807–
5 08 (“Not all potential conflicts between an expert’s job suitability recommendation and the
6 Dictionary’s listing of “maximum requirements” for an occupation will be apparent or
7 obvious. And, to reiterate, an ALJ need only follow up on those that are.”).

8 Therefore, because the ALJ correctly relied on VE testimony, she did not commit
9 materially harmful error in the step five analysis.

10 **IV. CONCLUSION**

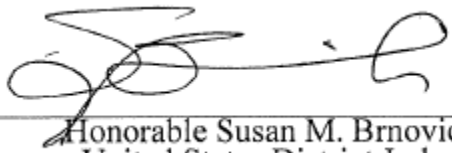
11 Therefore,

12 **IT IS ORDERED** affirming the January 22, 2021, decision of the ALJ, as upheld
13 by the Appeals Council.

14 **IT IS FURTHER ORDERED** directing the Clerk to enter final judgment
15 consistent with this Order and close this case.

16 Dated this 20th day of September, 2023.

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Honorable Susan M. Brnovich
United States District Judge